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fact sheet employment standards act

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PUBLIC HOLIDAYS

What is the purpose of the *Employment Standards Act, 2000 (ESA)*?

The *ESA* sets out rights of employees and requirements that apply to employers in most Ontario workplaces.

What work is not covered by the *ESA*?

Most employees and employers in Ontario are covered by the *ESA*. However, the *ESA* does **not** apply to certain individuals and persons or organizations for whom they may perform work, including:

- Employees in sectors that fall under federal jurisdiction, such as airlines, banks, the federal civil service, post offices, radio and television stations and inter-provincial railways
- Individuals performing work under a program approved by a college of applied arts and technology or university
- A secondary school student who performs work under a work experience program authorized by the school board that operates the school in which the student is enrolled
- People who do community participation under the *Ontario Works Act, 1997*
- Police officers (except for the Lie Detectors part of the *ESA*, which does apply)
- Inmates taking part in work or rehabilitation programs, or young offenders who perform work as part of a sentence or order of a court
- People who hold political, judicial, religious or elected trade union offices.

Employees of the Crown are excluded from some (but not all) provisions of the *ESA*.

For a complete listing of other job categories not governed by the *ESA*, please check the *ESA* and its regulations. Regulations set out exemptions to the law, special rules and details about how to apply certain sections of the *ESA*.



What are Ontario's public holidays?

Ontario has eight public holidays:

- New Year's Day
- Good Friday
- Victoria Day
- Canada Day
- Labour Day
- Thanksgiving Day
- Christmas Day
- Boxing Day (December 26)

Some employers give their employees a holiday on Easter Sunday, Easter Monday, the first Monday in August, or Remembrance Day. However, these days are not public holidays under the *ESA*.

QUALIFYING FOR PUBLIC HOLIDAY ENTITLEMENTS

Who qualifies?

Employees who qualify are entitled to take public holidays off work and be paid public holiday pay. Or they can agree in writing to work on the holiday, and will be paid either:

- public holiday pay plus a premium rate of pay for the hours worked on the public holiday
or
- their regular rate for hours worked on the holiday, plus they will receive a substitute holiday with public holiday pay.

Most employees are eligible for these public holiday entitlements.

For an explanation of regular rate, regular wages, public holiday pay, premium pay and substitute holidays, see *Understanding the public holiday rules: key definitions* later in this Fact Sheet.

Some employees may be required to work on a public holiday, either because:

- they work in jobs that are exempt from (i.e., not covered by) the public holiday part of the *ESA*
or
- they work in industries with special rules.

For more details about jobs and industries that aren't covered by the public holiday part of the *ESA*, or to which special rules apply, consult the chart in the "How are You Covered by the *ESA*?" Fact Sheet.

How do employees qualify for public holiday entitlements?

Generally, employees qualify for public holiday entitlements unless they:

- fail without reasonable cause to work their entire shift on their regularly scheduled days of work *before* or *after* the public holiday (this is called the "Last and First Rule")

or

- fail without reasonable cause to work their entire shift *on* the public holiday if they agreed to or were required to work that day (please note that only some employees can be required to work on a public holiday—see *What about employees who qualify for a public holiday but are required to work under special rules?* later in this Fact Sheet).

Qualified employees can be full-time, part-time, permanent or on a limited-term contract. They can also be students. It doesn't matter how recently they were hired, or how many days they worked before the public holiday.

Note: most employees who don't meet either of the qualifying criteria are entitled to be paid premium pay for every hour they work on the holiday.

What is "reasonable cause"?

Employees are generally considered to have "reasonable cause" for missing work when something beyond their control prevents them from working. Examples include, but are not limited to: absences related to emergency leave (i.e. personal illness, injury or medical emergency and the death, illness, injury, medical emergency or urgent matters relating to certain family members and dependent relatives) as well as absences for family medical leave.

Employees are responsible for showing that they had a reasonable cause for staying away from work. If they can do so, they still qualify for public holiday entitlements.

What is the "Last and First" Rule, and how does it work?

The "Last and First" Rule is one of the criteria that qualify employees for public holiday entitlements. The rule is that employees must:

- work *all* of their regularly scheduled days of work *before* and *after* the public holiday (unless they can show reasonable cause for failing to work)

However, the "regularly scheduled days of work before and after the public holiday" don't have to be the days right before and right after the holiday.

For example, if an employee isn't scheduled to work the day right before or after the holiday, as long as he or she works all of the last *regularly scheduled shift* before the holiday and all of the

first one after it—or provides reasonable cause for not working either of those days—he or she meets this criterion.

EMPLOYEE ENTITLEMENTS FOR PUBLIC HOLIDAYS

How much public holiday pay are qualified employees entitled to?

Here's how to calculate the amount of public holiday pay a qualified employee is entitled to:

- add all of the regular wages the employee earned and all of the vacation pay that was payable to the employee in the four work weeks ending just before the work week with the public holiday
- divide this sum by 20.

If the employee has earned a *substitute holiday* with public holiday pay, this calculation is done for the four work weeks before the work week in which the substitute day falls.

Understanding the public holiday rules: key definitions

Premium pay is at least 1½ times the employee's regular rate of pay. Employees who are entitled to receive premium pay for work on a public holiday must be paid at least 1½ times their regular rate of pay for each hour they work.

Public holiday pay is all of an employee's regular wages earned, plus all of the vacation pay payable, in the four weeks before the work week with the public holiday, divided by 20. If the employee has earned a substitute holiday with public holiday pay, the calculation is based on the four work weeks before the work week in which the substitute day falls.

Regular rate means an employee's rate of pay for each non-overtime hour of work in his or her usual work week.

Regular wages don't include any overtime, public holiday, vacation or premium pay owed to an employee.

A **substitute holiday** is another working day off work designated to replace a public holiday. Employees are entitled to be paid public holiday pay for a substitute holiday.

A substitute day off must be scheduled for no later than three months after the public holiday for which it was earned—or, if the employee has agreed *in writing*, up to 12 months after the public holiday.

Vacation pay payable includes any vacation pay owed to an employee who takes a vacation in the four work weeks before the public holiday (or substitute holiday). It also includes vacation pay owed to an employee who has agreed in writing that it will be paid either on each pay cheque or at any other time, if the payment is due during those four work weeks.

How to count the four work weeks before a work week with a public holiday

The “four work weeks before the work week with the public holiday” aren’t necessarily the four *calendar weeks* immediately before the public holiday. This four-week period is based on the employer’s work week.

What if a public holiday falls on a day off or during an employee’s vacation?

When a public holiday falls on a day that isn’t ordinarily a working day for an employee, or during the employee’s vacation, the employee is entitled to either:

- a substitute holiday off with public holiday pay (this must be scheduled for no more than three months after the public holiday or, if the employee has agreed in writing, up to 12 months after the public holiday)

or

- public holiday pay for the public holiday, if the employee agrees *in writing*. In this case, the employee isn’t given a substitute day off.

What if an employee who qualifies for the day off agrees to work on a public holiday?

Most employees have a right to refuse to work on a public holiday, and to take the day off and get paid public holiday pay. However, if an employee agrees *in writing* to work on the holiday, there are two options:

- the employee is entitled to wages at his or her regular rate for all hours worked on the public holiday *plus* another regular working day off with public holiday pay (this substitute day off must be scheduled for no later than three months after the public holiday or, if the employee has agreed in writing, up to 12 months after the public holiday)

or

- if the employee agrees *in writing*, he or she is entitled to public holiday pay for the public holiday *plus* premium pay (1½ times the employee’s regular rate) for all hours worked on the public holiday. In this case, the employee isn’t given a substitute day off.

What happens when an employee doesn’t work on a public holiday after agreeing to do so?

If an employee has agreed *in writing* to work on a public holiday but does not—and doesn’t show reasonable cause for not working—he or she has no right to public holiday pay or a substitute day off with pay.

However, if the employee can show reasonable cause for not working the public holiday, entitlements will depend on which of the two options below the employee chose in exchange for agreeing to work on the public holiday:

1. If the employee had agreed in writing to work on the public holiday for regular wages plus a substitute day off with public holiday pay:

- he or she is entitled to a substitute day off work with public holiday pay (this must be scheduled for no later than three months after the holiday or, if the employee has agreed in writing, up to 12 months after the holiday)

or

2. If the employee had agreed in writing to work on the public holiday for public holiday pay plus premium pay for each hour worked:

- he or she is entitled to receive public holiday pay for the holiday. However, the employee isn't entitled to be paid premium pay because no work was actually performed on the holiday.

What happens when an employee works only some of the hours agreed to on a public holiday?

If an employee has agreed in writing to work on the public holiday but works only some of the hours agreed upon—and doesn't show reasonable cause for not working—the employee is only entitled to receive premium pay for each hour worked on the holiday. The employee has no right to public holiday pay or a substitute day off work.

However, if reasonable cause is demonstrated for only working some of the hours agreed to:

- the employee is entitled to wages at his or her regular rate for all hours worked on the public holiday, *plus* a substitute day off work with public holiday pay (this must be scheduled for no later than three months after the holiday or, if the employee has agreed in writing, up to 12 months after the holiday)

or

- if the employee had earlier agreed in writing to work on the public holiday for public holiday pay plus premium pay for each hour worked, he or she is entitled to be paid public holiday pay plus premium pay for every hour worked on the holiday.

What about employees who qualify for a public holiday but are required to work under special rules?

Employees who work in the following businesses may be required to work on public holidays:

- hotels, motels and tourist resorts
- restaurants and taverns
- hospitals and nursing homes, and

- continuous operations (operations or parts of operations that do not shut down or close down more than once a week, such as oil refineries or alarm monitoring companies).

The only time these employees can be required to work on a public holiday without their agreement is when the public holiday falls on a day they would normally work, and they are not on vacation.

What if employment ends before a paid substitute holiday is taken?

Sometimes an employee's job comes to an end before the employee can take a substitute holiday with public holiday pay that he or she has earned. In this case, the employer must pay the public holiday pay at the same time it pays the employee's final wages.

What if the employer does not follow the *ESA*?

If an employee thinks the employer is not complying with the *ESA*, he or she can call or visit the nearest Ministry of Labour office to discuss a particular situation or to file a complaint. Complaints are investigated by an employment standards officer who can, if necessary, make orders against an employer—including an order to comply with the *ESA*.

This Fact Sheet provides general information about public holidays as set out in the *Employment Standards Act, 2000 (ESA)* and its regulations. For complete information please refer to the *ESA* and the regulations.

Need More Information?

If you have questions about the *Employment Standards Act*, call the Ontario Ministry of Labour's Employment Standards Information Centre at 416-326-7160 or 1-800-531-5551, or visit a Ministry of Labour office or Government Information Centre in person.

Here's how you can get written publications about the *Employment Standards Act*:

- Ministry of Labour website: www.gov.on.ca/lab
- Ministry of Labour Publications Sales unit: 1-800-809-4731

ESA Fact Sheets are available on the following subjects:

<input type="checkbox"/> Agricultural Workers	<input type="checkbox"/> Minimum Wage
<input type="checkbox"/> Domestic Workers	<input type="checkbox"/> Pregnancy Leave & Parental Leave
<input type="checkbox"/> Emergency Leave	<input type="checkbox"/> Public Holidays
<input type="checkbox"/> Family Medical Leave	<input type="checkbox"/> Retail Workers
<input type="checkbox"/> Frequently Asked Questions	<input type="checkbox"/> Role of the Ministry of Labour
<input type="checkbox"/> Homeworkers	<input type="checkbox"/> Termination of Employment & Severance Pay
<input type="checkbox"/> Hours of Work & Overtime	<input type="checkbox"/> Vacation
<input type="checkbox"/> How Are You Covered by the <i>ESA</i> ?	<input type="checkbox"/> What Young Workers Should Know
<input type="checkbox"/> How to File a Claim	

*This Fact Sheet is provided for your information and convenience only. It is not a legal document. For further information and the exact wording in the *ESA*, please refer to the Employment Standards Act, 2000 (*ESA*) and regulations.*

Please call the Employment Standards Information Centre in the greater Toronto area at 416-326-7160, or toll-free outside Toronto at 1-800-531-5551.

Information on the *ESA* can also be found at the *Employment Standards Act* section of the Ministry of Labour's website: www.gov.on.ca/lab. You can order copies of the *ESA* and related information materials from:

- the Ministry of Labour's Publication Sales Unit at 1-800-809-4731;
- the Ontario government E-Laws website at www.e-laws.gov.on.ca or,
- Publications Ontario, 1-800-668-9938; hearing impaired TTY 1-800-268-7095.

